

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:06CR246</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
	)	
<b>BRYAN DALE GREEN,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the Court on a Report and Recommendation (Filing No. 24) of a Magistrate Judge recommending that I accept the Defendant's plea of guilty as well as the government's motion for preliminary forfeiture (Filing No. 27). There are no objections to the Report and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 11.2(d), the Court has conducted a de novo review of the record.

The Defendant, Bryan Dale Green, is charged in a two-count Indictment with being a felon in possession of a firearm (Count I) and forfeiture (Count II). The forfeiture count is brought pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c). (Filing No. 1.)

The plea agreement mistakenly states that the Defendant pleaded to a one-count Indictment involving only the felon-in-possession charge. (Filing No. 22.) The plea petition also refers only to Count I. (Filing No. 21.) Nevertheless, the plea agreement includes a provision in ¶ 5 that the Defendant agrees pursuant to § 924(d) and § 2461(c) that the relevant property be forfeited. (Filing No. 22.) The plea colloquy involved a plea only to Count I and an agreement with respect to forfeiture of the property listed in Count II.

The government's motion for preliminary forfeiture is premised upon a plea to both Counts I and II of the Indictment. (Filing No. 27.)

Given the confusion in the record, Count II must be addressed. This can be accomplished either by a recommendation for dismissal of Count II or a knowing and voluntary plea to Count II. Therefore, this matter is remanded to Judge Gossett for further proceedings pursuant to Federal Rule of Criminal Procedure 11. This Court will revisit this matter upon the filing of a new Report and Recommendation.

IT IS ORDERED:

1. The Report and Recommendation (Filing No. 24) is denied;
2. The plea is not accepted at this time, and this matter is remanded for further proceedings pursuant to Federal Rule of Criminal Procedure 11;
3. The order on sentencing schedule (Filing No. 25) is withdrawn; and
4. The government's motion for preliminary forfeiture is denied without prejudice.

DATED this 20<sup>th</sup> day of December, 2006.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge